

**Minutes of the Kansas Sentencing Commission  
Meeting and Workshop  
October 5<sup>th</sup> & 6<sup>th</sup>, 2006**

The Honorable Ernest L. Johnson, Chairman, called the Kansas Sentencing Commission meeting and workshop to order on Thursday, October 5, 2006, at 9:15 a.m. The meeting was held in the Emerald III meeting room of the Topeka Capitol Plaza Hotel, Topeka, Kansas.

**Attendance**

Members: Honorable Ernest L. Johnson, Chairman; Paul Morrison, Vice Chairman; Honorable Christel Marquardt; Honorable Larry Solomon; Senator John Vratil; Representative Janice Pauls; Roger Werholtz, Secretary, Department of Corrections; Patricia Biggs, Kansas Parole Board; Rick Kittel, Board of Indigents' Defense Services; Chris Mechler, Office of Judicial Administration; Kevin Graham, designee, office of Attorney General; Reverend Junius Dotson, Public Member; Captain Dale Finger, Public Member. Staff: Kunlun Chang, Research Director; Fengfang Lu, Senior Research Analyst; Lora Moison, Research Analyst; Brenda Harmon, Administrative Assistant; Janice Brasher, Grant Administrator; Natalie Gibson, Staff Attorney; Jennifer Dalton, Accountant. Guests: Dr. Tony Fabelo, Criminal Justice Program, Council of State Governments; Marshall Clement, Criminal Justice Program, Council of State Governments; Don Stemen, Vera Institute of Justice; Andres Rengifo, Vera Institute of Justice; John Trembley, Director, Northwest Kansas Community Corrections; Laura Sager, National Campaign Director, Families Against Mandatory Minimums; Peter Ninemire, Midwest Organizer, Families Against Mandatory Minimums; Robert Sanders, Kansas Parole Board.

**Approval of the Minutes**

The Chairman referred to the minutes of the August 24, 2006, Kansas Sentencing Commission meeting. A motion was made to approve the minutes by Mr. Kevin Graham and seconded by Ms. Chris Mechler. The motion carried.

**Welcome**

Chairman Johnson welcomed guests and briefly reviewed the agenda. The workshop was scheduled after statistics in the FY 2007 Adult Prison Population Projections showed statutory obligations are almost certain to be in effect by the 2008 Legislative Session. They require the Sentencing Commission to make Legislative recommendations to "...identify and analyze the impact of specific options for (A) reducing the number of prison admissions; or (B) adjusting sentence lengths for specific groups of offenders..." when the projections indicate the inmate population will exceed available prison capacity within two years.

Presentations scheduled for today will help to give Commission members several different approaches in dealing with offenders, proportional sentencing and meaningful ways for offenders to be rehabilitated and as is part of our mandate, to avoid prison. Plans are to have some definite approaches for the new Sentencing Commission Executive Director and staff to follow in their research. However, definite decisions will not be made until the new Executive Director is in place, so he/she can assist in the approaches to the Legislation.

### **2003 – Senate Bill 123 Implementation Evaluation**

Mr. Don Stemen, with the Vera Institute of Justice, gave an overview of how and why the SB 123 Implementation Evaluation was conducted. The Sentencing Commission is mandated by the Legislature to look at the implementation of the SB 123 Program by having evaluations at 18, 36 and 60 months. Last year Ms. Biggs contracted with Vera to conduct the 18 month evaluation. It was conducted to try and understand how the program is functioning, how it is implemented, and problems that may have been incurred during the initial phases of the program.

With assistance from Ms. Biggs, a proposal was submitted by Vera for Federal funding to help pay for the 36 and 60 month evaluations, and a grant has been received from the National Institute of Justice for \$275,000 to study the impact of SB 123 at the 36 and 60 month time frames. Vera staff will be back in Kansas starting this November when that grant begins, to study what the ongoing impact of SB 123 has been.

Mr. Andres Rengifo, with Vera, gave a PowerPoint Presentation on the Process and Implementation Evaluation of SB 123. Handouts of the Evaluation and Presentation were provided. Highlights of the first 18 month evaluation included:

- Administrative records of all SB 123-eligible cases between November 1, 2003 and May 31, 2005 were used
- Interviews with heads of Community Corrections and Service Providers were conducted
- Focus groups/mail-in surveys for Probation Officers and treatment Counselors were obtained
- Field visits and informal interviews with staff were utilized
- SB 123 sentences have remained relatively stable
- Population served by SB 123 includes relatively serious offenders
- Regional differences impact the nature of judicial processes
- The number of offenders sentenced under SB 123 is growing steadily (11%) with no significant delays on processing
- Emerging challenges include:
  1. Issues of determination of eligibility for SB 123
  2. Impact of local sentencing practices (urban vs. rural)
  3. Disparity in access to supervision and counseling services
- No evidence found of an unbalance between Officers and Counselors regarding the design and follow-up of probation plans; however

- Some treatment decisions are being made on the basis of availability, cost and association with supervision processes
- Only 20% of the offenders sentenced to SB 123 during the first 18 months of program operation were discharged from supervision by the end of study period
  1. SB 123 offenders had a higher successful termination rate and a lower incidence of revocations for violation of conditions than drug possessors sentenced to regular Community Corrections
  2. More intensive treatment and supervision settings seem to be associated with successful discharge from SB 123
- Opportunities for reform:
  1. Build connections with local county attorneys and judges on SB 123 processes and outcomes
  2. Enhance provision of services in rural areas (treatment and supervision)
  3. Re-examine administration and opportunity of assessments
  4. Review certification process for agencies and individual counselors.

Chairman Johnson headed a detailed discussion following the presentation. A suggestion was made to invite judges and county district attorneys when the update conferences are held to have their input and help disseminate information. A motion was then made by Secretary Roger Werholtz and seconded by Representative Janice Pauls to accept the report “Kansas Senate Bill 123 – A Process and Implementation Evaluation” prepared for the Kansas Sentencing Commission by the Vera Institute of Justice. The report is submitted by Mr. Don Stemen and Mr. Andres Rengifo, and dated July, 2006. The motion carried, and the report was approved.

### **Review of Prison Population Projections**

The KSC FY 2007 Adult Inmate Prison Population Projections were presented and approved at the last Commission meeting. Mr. Kunlun Chang, KSC Research Director, gave a recap of the Projections by PowerPoint Presentation. Prison population is derived by number of admissions and length of stay. Handouts of the report were provided.

### **Presentation #1: What’s Working in Kansas – A Review of Northwest Kansas Community Corrections**

Mr. John Trembley, Director of Northwest Kansas Community Corrections, gave a presentation on methamphetamine treatment programs in his region. A handout was provided. His agency covers 17 counties, with offices located in Hays, Colby, Norton and Osborne. Staff includes five full time intensive supervision officers and six part time surveillance officers. They supervise approximately 350 Community Corrections offenders and 150 offenders under the custody of the Secretary of Corrections yearly. They began their meth treatment program in April, 2002, about a year and a half before the implementation of SB 123.

Highlights discussed included:

- Treatment outcomes with meth users identical to results with cocaine users

- Outcomes using traditional methods show poor results
- Training resources seriously inadequate to educate clinicians in areas affected by meth
- Retention in treatment works
- Drug courts and Matrix Model (from Southern California) extremely useful in treating meth users
- Since 2003, 29.2% of offenders in this area of Kansas sentenced to Community Corrections have had a meth history
- Of those offenders sentenced for drug convictions since 2003, 63% involved a conviction for meth
- Since 2003, through increased drug testing and surveillance an additional 13.6% of offenders who had no previous meth history were identified as having a meth history

Meth treatment client data:

- 41% complete treatment successfully
- 5% complete treatment unsuccessfully
- 10% currently in treatment
- 20% sent to jail, prison or boot camp
- 7% entering inpatient or reintegration
- 17% have absconded, transferred to original county, deceased or no treatment recommended

Drug testing data for FY 2006:

- 75% of offenders did not test positive for meth after entering program
- 58.3% of offenders did not test positive for any drugs or alcohol after entering treatment program.

## **Presentation #2: Tough and Smart: Opportunities for Kansas Policymakers to Reduce Crime and Spending**

The next presentation was given by Mr. Marshall Clement and Dr. Tony Fabelo, with the Criminal Justice Program Council of State Governments. The screen presentation included a handout of the report for Commission members.

The Council of State Governments is a non-profit, non-partisan membership association of state government officials, funded largely through state dues. It represents all three branches of state government: legislature, judiciary and the executive branch, and provides a non-partisan setting to discuss controversial criminal justice topics outside of the public spotlight. They are working in several states to help with justice reinvestment strategies.

Justice Reinvestment Framework includes three steps:

- Analyze prison population and “high stakes” communities to which offenders return
- Control prison population growth to generate savings

- Capture some “savings” from reduced prison costs to “reinvest” in neighborhood-based strategies, particularly neighborhood communities where offenders are coming from and returning to.

The Kansas framework is “Tough and Smart”:

- Tough – Increased punishments for violent offenders
- Smart – Increased alternatives for low-level nonviolent offenders (as in SB 123)
- Current pressure on the framework is the high number of revocations consuming a large percentage of prison capacity.

Policy Options to Strengthen Framework:

- Sustain reduced rate of parole failures at 90 each month (from 135 per month currently projected)
- Strengthen Community Corrections to reduce the number of probation/Community Corrections violators by 20% (from 170 to 142 per month)
- Reduce risk before release by creating a “risk reduction program credit” for guideline offenders who successfully complete treatment, educational, and vocational programs before release.

Assumptions and Challenges:

- Financing policy options
- Implementation effectiveness
- Accountability monitoring.

Summary:

- Try and figure out where the high stake communities are
- Consuming large space of prison by conditional parole and probation revocations. This space should be better utilized with offgrid and sex offenders
- Control the prison population growth and try to generate savings
- Capture some of those savings to put into alternative services in high stake communities.

### **Presentation #3: Reforming Michigan’s Mandatory Minimum Drug Laws**

Ms. Laura Sager, National Campaign Director for Families Against Mandatory Minimums (FAMM) gave the next presentation on Michigan’s experience with Truth in Sentencing. FAMM is a national, nonpartisan sentencing reform organization, founded in 1991 by families of prisoners, attorneys and criminal justice professionals. FAMM works on the state and federal level. They provide support to members and other groups working on legislative reform. Ms. Sager gave a multimedia presentation, with a folder of handouts provided to Commission members. Highlights from the presentation included:

- Supports “smart on crime” policies that include mental health and substance abuse treatment, drug court and other programs that reduce recidivism and improve public safety

- Michigan's mandatory minimum drug sentences were among the harshest in the nation, including the notorious "650 Lifer Law" – life without parole for delivery/conspiracy to deliver 650 grams or more of heroin or cocaine
- In 1998 the "650 Lifer Law" was changed from "life without parole" to 20 years to life, with over 200 offenders affected
- In 2003 reforms eliminated mandatory consecutive sentencing for delivery and possession offenses, and
- Penalty of "lifetime probation" for the lowest-level drug offenders changed to a 5-year probationary period (7,000 affected)
- Reforms helped to avert an impending bed space crisis and substantially contributed to the decline in Michigan's prison population in 2003
- Of 7,000 serving lifetime probation, approximately 3,200 were immediately eligible for discharge.

#### **Presentation #4: Kansas Sentencing Guidelines: Proportionality – A review and update**

Mr. Don Stemen discussed a proportionality study done two years ago by the Vera Institute for the Kansas Sentencing Commission. He updated the study using 2006 Guidelines. A handout was provided.

The four questions asked when evaluating proportionality (using 2006 Guidelines) were:

1. Are presumptive prison sentences reserved for person felonies?
  - They remain reserved largely for person felonies, but
  - There are now 68 nonperson felonies that have prison sentences or fall in a border box for a first offense.
2. Are presumptive sentence lengths generally longer for person felonies than for nonperson felonies?
  - Presumptive sentence lengths are generally longer for person felonies
  - 14 nonperson offenses and 9 drug offenses had longer presumptive prison sentences than several violent person felonies for a first offense.
3. Are severity levels the same for offenses with similar degrees of harm?
  - Offenses involving similar degrees of harm generally receive similar severity rankings
  - 2 person felonies rank *lower* than other offenses involving similar harm
  - 3 person felonies rank *higher* than other offenses involving similar harm
  - 13 nonperson offenses rank higher than other offenses involving similar loss
  - Jessica's Law created several changes to sentence lengths.
4. Are sentences for repeat offenses proportionate to the severity of the current offense?
  - Generally proportionate to the severity of the current offense.

#### Evaluating Proportionality: Next Steps

- Analyze the impact of presumptive prison sentences for certain offenses
- Review the internal consistency of the guidelines recommendations
- Reassess the level of harm for all offenses
- Assess continuity of sentences between drug and nondrug grids
- Review sentences for repeat drug offenses.

#### **Questions and Discussion**

Chairman Johnson led a discussion and integration of information from the day with Commission members and presenters. Even though projections show we will not be required to present options to the Legislature until most likely the 2008 Session, we do need to let the Legislature know that if there is no change in policy, we must appropriate funds to build this coming Session because it will take two years to bring capacity on line. Even then, if nothing changes, we will still be in the position of being short of beds before a new prison can be completed.

The Chairman recessed the workshop until Friday at 9:00 a.m.

#### **Friday, October 6<sup>th</sup>, 2006**

Chairman Johnson re-opened the workshop at 9:10 a.m. on Friday, October 6<sup>th</sup>, 2006 in the Emerald III meeting room of the Topeka Capitol Plaza Hotel.

#### **Recap of Thursday's Presentations**

Chairman Johnson thanked the presenters from Thursday for their valuable contributions. While they gave the Commission informative "food for thought" he reminded everyone we already knew our target population for any suggested change was going to be those who face revocation. From the Projections given last month, this seems to be the target group that would yield the most bed space benefit. The issue now is how to best deal with those revocations.

Commission members and presenters followed with a general discussion, listing several ideas and options the Commission would like to pursue. The research staff was requested to write several specific impacts to be presented at the November Commission meeting. This data will further assist the Commission in outlining their proposals to be presented to the Legislature. It will also provide more detailed information be available to the new Executive Director when he/she joins the staff, hopefully before next month's Commission meeting.

#### **Executive Session – personnel matters**

Senator John Vratil moved that the Sentencing Commission recess to Executive Session for a period of 30 minutes until 12:17 p.m. for the purpose of discussing non-elective personnel, in order to protect the privacy of those involved. Vice Chairman Paul

Morrison made a second to the motion. The motion carried, and Executive Session began at 11:47 a.m.

The initial 30 minutes of Executive Session was exhausted, and Senator John Vratil made an additional motion to extend the Executive Session for another 15 minutes, or until 12:32 p.m., for the same reason as stated in the previous motion. Vice Chairman Paul Morrison made a second to the motion. The motion carried, and Executive Session was extended. At 12:32 p.m. the Executive Session ended.

Chairman Johnson thanked everyone for their attendance and valuable contributions during the two day meeting and workshop, which will help the Commission move forward with their statutory obligations.

Senator John Vratil moved that the Sentencing Commission offer the position of Executive Director to Helen Pedigo to be effective as soon as she can graciously and appropriately obtain release from her current position, and that her salary offer be \$72,000 per year, upon approval of the Governor. Vice Chairman Paul Morrison made a second to the motion. The motion carried.

### **Next Meeting**

The next Commission meeting is scheduled for Thursday, November 9<sup>th</sup>, 2006 at 1:30 p.m. at the Jayhawk Tower, Topeka.

A motion was made by Mr. Kevin Graham and seconded by Judge Marquardt to adjourn the meeting. The motion carried, and the meeting was adjourned.